IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4814 of 2006
With
FIRST APPEAL Nos. 4816 to 4830 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE SPECIAL LAND ACQUISITION OFFICER & 1 - Appellants
Versus
SHRI KANIRAMJI KALYANDASHJI MAHNAT AND MANAGER OF - Respondents.

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Appearance :
MR SUNIT S SHAH, GOVERNMENT PLEADER for Appellants in First Appeal Nos. 4814, 4816 to 4820 of 2006. MS Sandhya Natani, A.G.P. for Appellants in First Appeal Nos. 4821 to 4830 of 2006.
MR MANAV A MEHTA for Respondents-claimants in First Appeal Nos.4814, 4816 to 4822 of 2006. MS AMRITA AJMERA for Respondents-claimants in First Appeal Nos.4823 to 4830 of 2006.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 18/04/2007

ORAL COMMON JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

What is challenged in these appeals filed under Section 54 of the Land Acquisition Act, 1894 ["the Act" for short] read with Section 96 of the Code of Civil Procedure, 1908 is the legality of common judgment and award dated November 30, 2005, rendered by the learned Principal District Judge, Surendranagar, in Land Reference Case Nos. 317 and 319 to 333 of 1999, by which the claimants have been awarded additional amount of compensation at the rate of Rs. 140.10 Ps. per sq.mt., for irrigated lands, Rs.141.40 Ps. per sq.mt for non-irrigated lands and Rs. 143/- per sq.mt. for kharaba lands, over and above the compensation offered to them at the rate of Rs. 3.90 Ps. per sq.mt. for irrigated lands, Rs. 2.60 Ps. per sq.mt. for non-irrigated lands and Rs.1/- per sq.mt. for kharaba lands by the Special Land Acquisition Officer vide award dated February 3, 1998.

2. A proposal was received by the State Government to acquire lands of village Dudhrej, Taluka : Wadhwan, District : Surendranagar for the public purpose of

construction of canal under Narmada Project. On perusal of the said proposal, the State Government was satisfied that the lands of village Dudhrej specified therein were likely to be needed for the public purpose. Therefore, a notification under Section 4(1) of the Act was issued, which was published in the Official Gazette on August 16, 1994. Thereafter necessary inquiry was made under Section 5 of the Act and a report was forwarded by the Special Land Acquisition Officer to the State Government as contemplated by Section 5A(2) of the Act. On the basis of the said report, the State Government was satisfied that the lands of village Dudhrej, which were specified in the notification published under Section 4(1) of the Act were needed for the public purpose of construction of canal under Narmada Project. Therefore, a declaration under Section 6 of the Act was made, which was published in the Official Gazette on September 28, 1995. The interested persons were thereafter served with notices for determination of compensation payable to them. Accordingly, the claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.

200/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated February 3, 1998 offered compensation to the claimants at the rate of Rs. 3.90 Ps. per sq.mt. for irrigated lands, Rs. 2.61 Ps. per sq.mt. for non-irrigated lands and Rs.0.01 Ps. per sq.mt. for kharaba lands. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, references were made to the District Court, Surendranagar, where they were registered as Land Acquisition Case Nos.317 of 1999 to 333 of 1999.

3. On behalf of the claimants, three witnesses were examined in support of their claim for enhanced compensation. They were (1) Narubha Takhubha Zala at Exh.31, (2) Sadhu Shri Vanravandasji Guru Shri

Kalyandashji at Exh.35, and (3) Ashwinbhai Bachubhai Parmar at Exh.46. The claimants relied upon sale-deeds produced at Exhs. 25 to 29 & 43 to 45 relating to non-agricultural lands of village Dudhrej, in support of their claim for enhanced compensation; whereas the acquiring authorities relied upon sale-deeds produced at Exh.51 to 56 relating to the lands of village Dudhrej, in support of their claim that the claimants were not entitled to enhanced compensation. It may be mentioned that the acquiring authorities also relied upon two previous awards of the Reference Court relating to the lands of this very village produced at Exh.57 & 60 in support of their case that the Reference Applications were liable to be dismissed.

4. On appreciation of evidence adduced by the parties, the Reference Court came to the conclusion that because of small size of the lands covered by the sale-deeds produced on behalf of the claimants, those sale-deeds were not relevant for the purpose of determining the market value of the lands acquired in the instant case. The Reference Court referred to two previous awards of the Reference Court relating to the

lands of this village, but, after coming to the conclusion that the claimants would be entitled to compensation at the rate ranging between Rs.25/- to Rs. 30/- per sq.mt. did not rely upon those awards for the purpose of determining market value of the lands acquired in the instant case. The Reference Court further referred to sale-deeds produced by the acquiring authorities and found that the price indicated in those sale-deeds ranged between Rs.2/- to Rs.165/- per sq.mt. The Reference Court thereafter picked up price of Rs.165/- per sq.mt. as indicated in deed Exh.56 and added 10% being rise in price of lands because of time-gap between publication of notification issued under Section 4(1) of the Act and the date on which deed Exh.56 was executed i.e. July 11, 1994. In ultimate analysis, the Reference Court held that on the basis of Exh.56, the claimants would be entitled to compensation at the rate of Rs. 180/- per sq.mt. However, thereafter the Reference Court deducted 20% from the figure ascertained with reference to Exh.56 on the ground of small size of land involved therein and has come to the conclusion that the claimants would be entitled to additional

compensation at the rate of Rs.140.10 Ps. per sq.mt. for irrigated lands, Rs.141.40 Ps. per sq.mt. for non-irrigated lands and Rs. 143/- per sq.mt. for kharaba lands, by the impugned award, giving rise to the above-numbered appeals.

5. This Court has heard Ms.Sandhya Natani, learned Assistant Government Pleader for the appellants, and Mr.Manav Mehta, learned Counsel for the claimant/s in each appeal, at length and in great detail. This Court has also considered record and proceedings of the case as well as the paper-book supplied by the learned Counsel for the appellants, which includes oral as well as documentary evidence adduced by the parties before the Reference Court.

6. From the record of the case, it is evident that the claimants had relied upon following sale-deeds relating to non-agricultural lands in support of their claim for enhanced compensation:

Sr No.	Exh. No.	Date of Execution of Sale Deed	Survey No.	Measurement of land sold	Consideration of amount of sale mentioned in the deed (In Rupees)	Price Per Square Metre (In Rupees)
1.	25	27/01/1994	694	201.29	55,000	273.23
2.	26	08/02/1994	511	85.32	18,000	210.97
3.	27	21/02/1994	510	85.05	18,500	217.51
4.	28	11/03/1994	691	105.56	45,000	426.29
5.	29	09/05/1994	535/1	113.52	20,000	177.00
6.	43	03/04/1995	585	76.17	14,500	190.36
7.	44	24/04/1996	591	149.75	36,000	240.40
8.	45	30/01/1995	467	84.00	12,500	148.80

Whereas the acquiring authorities had relied upon the following sale-deeds and agreement to sell relating to agricultural lands :

Sr. No.	Exh. No.	Date of Execution of Sale Deed	Survey No.	Measurement of land sold	Consideration of amount of sale mentioned in the deed (In Rupees)	Price Per Square Metre (In Rupees)
1	51	08/03/1994	692	0-H 90-Ares 40-Sq.mts. (2 Acres 9 Gunthas	1,95,000	22.00
2	52	29/03/1994	829	5 Acres 2 Gunthas	40,000	2.00
3	53	31/05/1994	321	1-H 13-Ares 31 Sq.mts.	50,000	4.50
4	54	29/03/1994	840/3	0-H 30-Ares 35 sq.mts.	45,000	14.82
5	55	09/12/1993	474	2 Acres-4 Gunthas N.A.land	20,000	35.81
6	56	11/07/1994	581/2	500 sq.mts.	96,000	165.00

The record further shows that the acquiring authorities had also relied upon two previous awards of the Reference Court relating to the lands of this

very village, which were produced at Exhs.57 & 62 in support of their claim that the claimants were not entitled to enhanced compensation.

7. From the impugned judgment it is evident that the Reference Court did not rely upon any of the sale-deeds produced by the claimants on the ground that each sale-deed was relating to small piece of land, whereas in the instant case large tracts of lands were acquired. The Reference Court also did not rely upon the two previous awards produced by the acquiring authorities. However, the Reference Court relied upon Exh.56 dated July 11, 1994, which was an agreement to sell, for the purpose of determining the market value of the lands acquired in the instant case. As per the said document, the price which was indicated was Rs.165/- per sq.mt. as on July 11, 1994. The Reference Court noticed that in the instant case, notification under Section 4(1) of the Act was published in the Official Gazette on August 16, 1994 and, therefore, the claimants were entitled to reasonable rise in price of the lands at the rate of 10% per annum. In the ultimate analysis, the Reference Court held that

on the basis of Exh.56 produced by the acquiring authorities, the claimants would be entitled to compensation at the rate of Rs.180/- per sq.mt. However, further deduction was made because the extent of piece of land agreed to be sold by document at Exh.56 was small in comparison to large tracts of lands sought to be acquired and, therefore, the Reference Court has held that the claimants would be entitled to additional amount of compensation at the rate of Rs. 140.10 Ps. per sq.mt. for irrigated lands, Rs.141.40 Ps. per sq.mt. for non-irrigated lands and Rs.143/-per sq.mt. for Kharaba lands.

8. The contention that the sale-deeds produced by the acquiring authorities relating to agricultural lands should be taken into consideration for the purpose of determining market value of the lands acquired in the instant case and, therefore, the amount of compensation awarded to the claimants should be substantially sliced down, cannot be accepted. On perusal of the map produced by the appellants at Exh.50, it is evident that all the survey numbers forming part of the documents at Exhs.51 to 56 are

situated at a distance from the acquired lands and would not furnish good guidance for the purpose of determining market value of the lands acquired in the instant case. It may further be mentioned that Exh.56, which is a document dated July 11, 1994 indicates that the price of survey No.993 was Rs.165/- per sq.mt. as on July 11, 1994. The said document was produced by the acquiring authorities themselves along with list Exh.49. By production of the said document, the acquiring authorities wanted the Reference Court to determine the amount of compensation payable to the claimants on the basis of the said document. If that document is taken into consideration, the claimants would be entitled to compensation as calculated by the Reference Court and the appeals will have to be dismissed. However, this Court finds that Survey No.993, which was subject matter of deed dated July 11, 1994, was situated at a great distance from the lands acquired in the instant case and could not have been made basis for the purpose of determining the market value of the lands acquired in the instant case. Under the circumstances, Exh.56 will have to be taken out of consideration while determining the

market value of the lands acquired in the instant case. In view of the principles laid down in **Ravinder Narain and another v. Union of India, AIR 2003 SC 1987,** once the documents produced by the acquiring authorities are treated as irrelevant for the purpose of determining market value of the lands acquired in the instant case, the question which would arise for consideration of the Court is, whether the documents produced by the claimants relating to non-agricultural lands should be taken into consideration while determining the market value of the lands acquired in the instant case. In **P.Ram Reddy and others v. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and others,(1995)2 SCC 305,** following principles have been laid down by the Supreme Court :

> "8. *Building potentiality of acquired land*- Market value of land acquired under the LA Act is the main component of the amount of compensation awardable for such land under Section 23(1) of the LA Act. The market value of such land must relate to the last of the dates of publication of notification or giving of public notice of substance of such notification according to Section 4(1) of the LA Act. Such market value of

the acquired land cannot only be its value with reference to the actual use to which it was put on the relevant date envisaged under Section 4(1) of the LA Act, but ought to be its value with reference to the better use to which it is reasonably capable of being put in the immediate or near future. Possibility of the acquired land put to certain use on the date envisaged under Section 4(1) of the LA Act, of becoming available for better use in the immediate or near future, is regarded as its potentiality. It is for this reason that the market value of the acquired land when has to be determined with reference to the date envisaged under Section 4(1) of the LA Act, the same has to be done not merely with reference to the use to which it was put on such date, but, also on the possibility of it becoming available in the immediate or near future for better use, i.e. on its potentiality. When the acquired land has the potentiality of being used for building purposes in the immediate or near future it is such potentiality which is regarded as building potentiality of the acquired land. Therefore, if the acquired land has the building potentiality, its value, like the value of any other potentiality of the land should necessarily be taken into account for determining the market value of such land. Therefore, when a land with building potentiality is acquired, the price which its willing seller could reasonably expect to obtain from its willing purchaser with reference to the date envisaged under Section 4(1) of the LA Act, ought to necessarily include

that portion of the price of the land attributable to its building potentiality. Such price of the acquired land then becomes its market value envisaged under Section 23(1) of the LA Act. If that be the market value of the acquired land with building potentiality, which acquired land could be regarded to have a building potentiality and how the market value of such acquired land with such building potentiality requires to be measured or determined are matters which remain for our consideration now.

9. An acquired land could be regarded as that which has a building potentiality, if such land although was used on the relevant date envisaged under Section 4(1) of the LA Act for agricultural or horticultural or other like purposes or was on that date even barren or waste, had the possibility of being used immediately or in the near future as land for putting up residential, commercial, industrial or other buildings. However, the fact that the acquired land had been acquired for building purposes, cannot be sufficient circumstance to regard it as a land with building potentiality, in that, under clause (4) of Section 24 of the LA Act that any increase to the value of land likely to accrue from the use to which it will be put when acquired, is required to be excluded. Therefore, wherever, there is a possibility of the acquired land not used for building purposes on the relevant date envisaged under Section 4(1) of the LA Act, of

being used for putting up buildings either immediately or in the near future, but, not in the distant future, then such acquired land would be regarded as that which has a building potentiality. Even so, when can it be said that there is the possibility of the acquired land being used in the immediate or near future for putting up buildings, would be the real question. Such possibility of user of the acquired land for building purposes can never be wholly a matter of conjecture or surmise or guess. On the other hand, it should be a matter of interference to be drawn based on appreciation of material placed on record to establish such possibility. Material so placed on record or made available must necessarily relate to the matters such as:

(i) the situation of the acquired land vis-a-vis the city or the town or village which had been growing in size because of its commercial, industrial, educational, religious or any other kind of importance or because of its explosive population;

(ii) the suitability of the acquired land for putting up the buildings, be they residential, commercial or industrial, as the case may be,

(iii) possibility of obtaining water and electric supply for occupants of buildings to be put up on that land;

(iv) absence of statutory impediments or the like for using the acquired land for building purposes;

(v) existence of highways, public roads,layouts

of building plots or developed residential extensions in the vicinity or close proximity of the acquired land;

(vi) benefits or advantages of educational institutions, health care centres, or the like in the surrounding areas of the acquired land which may become available to the occupiers of buildings, if built on the acquired land; and

(vii) lands around the acquired land or the acquired land itself being in demand for building purposes, to specify as few.

The material to be so placed on record or made available in respect of the said matters and the like, cannot have the needed evidentiary value for concluding that the acquired land being used for building purposes in the immediate or near future unless the same is supported by reliable documentary evidence, as far as the circumstances permit. When once a conclusion is reached that there was a possibility of the acquired land being used for putting up buildings in the immediate or near future, conclusion would be sufficient to hold that the acquired land had a building potentiality and proceed to determine its market value taking into account the increase in price attributable to such building potentiality.

10. Then, comes the question of determining the market value of the acquired land with building potentiality. Undoubtedly such market value of the land having regard to the use to which it was

put on the relevant date envisaged under Section 4(1) of the LA Act plus the increase in that market value because of the possibility of the acquired land being used for putting up buildings, in the immediate or near future. If there is any other land with building potentiality similar to the acquired land which had been sold for a price obtained by a willing seller from a willing purchaser, such price could be taken to be the market value of the acquired land, in that, it would have comprised of the market value of the land as was being actually used plus increase in price attributable to its building potentiality. If the prices fetched by sale of similar land with building potentiality in the neighbourhood or vicinity of acquired lands with building potentiality, as on the relevant date envisaged under Section 4(1) of the LA Act, are unavailable, it becomes necessary to find out whether any building plots laid out in a land similar to the acquired land had been sold by a willing seller to a willing buyer on or nearabout the relevant date under Section 4(1) when the acquired land had been proposed for acquisition and then to find out what would be the price which the acquired land would have fetched if it had been sold by making it into building plots similar to those sold. In other words, a hypothetical layout of building plots in the acquired land similar to that of the layout of building plots actually made in the other similar land, has to be prepared, and the price fetched by sale of building plots in the

> layout actually made should form the basis for fixing the total price of the acquired land with building potentiality to be got if plots similar to other plots had been made in the latter land and sold by taking into account plus factors and minus factors involved in the process."

In view of the evidence tendered by the witnesses examined on behalf of the claimants, there is no manner of doubt that the lands acquired in the instant case had building potentiality and, therefore, the principles laid down by the Supreme Court in the above-quoted decision would be applicable to the facts of the present case. As noticed earlier, eight sale-deeds were relied upon by the claimants in support of their claim for enhanced compensation. However, Exh.43, 44 & 45 relate to post-notification sales and, therefore, would not be relevant for the purpose of determining market value of the lands acquired on August 16, 1994. This Court finds that Exh.29 is close in proximity of time to the date of notification and, therefore, would furnish good guidance for the purpose of determining market value of the lands acquired in the instant case. On the basis of the said deed, the claimants would be entitled to compensation at the

rate of Rs.177/- per sq.mt. However, this Court notices that land admeasuring 113.52 sq.mts.was sold by deed dated May 9, 1994, whereas in the instant case, large tracts of lands were acquired and, therefore, appropriate deduction will have to be made. If 1/3rd amount is deducted, the price of the lands acquired will have to be assessed at Rs.118/- per sq.mt. For determining value of agricultural lands acquired in the instant case, this Court is of the opinion that further deduction should be made in respect of development expenses, interest on the outlays for the period of deferment of realisation of the price, profits on venture etc. at the rate of 10%, which would indicate that the claimants would be entitled to compensation at the rate of Rs.106/- per sq.mt. On the facts and in the circumstances of the case, the said figure is rounded off to Rs.110/- per sq.mt. for the purpose of convenience. Thus, on reappreciation of the evidence, this Court finds that the claimants would be entitled to compensation at the rate of RS. 110/- per sq.mt. and not at the rates determined by the Reference Court. Therefore, the appeals will have to be allowed in part.

For the foregoing reasons, all the appeals partly succeed. The judgment and award dated November 30, 2005 rendered by the learned Principal District Judge, Surendranagar, in Land Reference Case Nos.317 and 319 to 333 of 1999 awarding additional compensation at the rate of Rs.140.10 ps. per sq.mt. for irrigated lands, Rs.141.40 ps. per sq.mt. for non-irrigated lands and Rs.143/- per sq.mt. for Kharaba lands, over and above the compensation offered to the claimants at the rate of Rs. 3.90 ps. per sq.mt. for irrigated lands, Rs.2.60 ps. per sq.mt. for non-irrigated lands and Rs.1/- per sq.mt. for kharaba lands by the Special Land Acquisition Officer is hereby modified, and it is held that the claimants, in all, would be entitled to compensation at the rate of Rs.110/- per sq.mt. The other statutory benefits which have been conferred on the claimants, are not interfered with and are hereby confirmed. The appeals are allowed to the extent indicated hereinabove. There shall be no orders as to costs.

The Registry is directed to draw decree in terms

of this judgment immediately. The Registry is further directed to send back R & P to the Reference Court forthwith.

[J.M.PANCHAL,J.]

[SMT.ABHILASHA KUMARI,J.]

(patel)